SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 880

CHEMICAL LEAMAN TANK LINES, INC., ET AL.,

Appellants

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees

On Appeal from the United States District Court for the Southern District of Mississippi, Jackson Division

MOTION TO AFFIRM

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Date: January 7, 1970

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MOTION TO AFFIRM

Pursuant to Rule 16(4)(e) of the Rules of the Court, Durward L. Bell, dba Bell Transport Company of Longview, Texas, moves that the judgment of the District Court be affirmed.

STATEMENT

This is a direct appeal from the final judgments of a three-judge district court which affirmed the orders of the Interstate Commerce Commission served April 7, 1967 and June 25, 1967, in Docket No. MC-98749.

(Sub No. 22), Civil Action No. 4176, and February 7, 1966, August 1, 1966, and December 2, 1966 in Docket No. MC-98749 (Sub No. 1) (Explosive Deviation), Civil Action No. 4175. The district court having affirmed the Interstate Commerce Commission orders in Docket No. MC-98749 (Sub No. 22) in Civil Action No. 4176, the complaint in Civil Action No. 4175 became moot as agreed by the parties, and was also dismissed. (J.S.App., A, B, C, D and E)

Appellants' statements of the proceedings before the Interstate Commerce Commission (hereinafter referred to as the Commission) in No. MC-98749 (Sub No. 22) (hereinafter sometimes referred to as Sub No. 22) and No. MC-98749 (Sub No. 1)—Explosive Deviation (hereinafter referred to as Deviation), and in Civil Action No. 4176 and Civil Action No. 4175 are substantially correct and need be enlarged upon only in two respects for the purposes of this Motion To Affirm.

In the Deviation proceeding, it should be noted that at the time the Commission issued its order served February 7, 1966 (J.S. App. C) there can be no question that Durward L. Bell, dba Bell Transport Company (hereinafter referred to as Bell) had express permission of Texas Eastman Company (hereinafter referred to as Eastman) to use its plant property for purposes of interchange of equipment in joint-line services or in joinder of operating authorities held by Bell in single-line services. The Commission and each of the appellants were furnished copies of a letter dated January 12, 1966 in Bell's Reply To Protests Of Proposed Deviation dated January 17, 1966. (See App. A)

In fact, Bell had had permission to use Eastman plant property for purposes of joinder of authorities and interchange of equipment since 1963; and, in October and November of 1965 he was interchanging equipment with joint-line carriers on the plant property at the monthly rate of over one hundred loads of bulk chemicals, the vast majority of which were so flammable, corrosive, poisonous, explosive or otherwise inherently dangerous as to constitute a threat to the safety of the public.

The issues raised by appellants' protests of the Deviation proceeding were inevitably injected into the Sub No. 22 proceeding, and the Commission received evidence and testimony in the latter proceeding of the facts in existence at the time of the oral hearing in June of 1966, as well as those facts in existence at the time the notice of intent to deviate the point of interchange filed by Bell in the latter part of November of 1965.

On proper motion, the district court permitted Bell to intervene in defense of the Commission's orders.

ARGUMENT

The decision below is correct, and this appeal does not present a substantial question warranting plenary review by the Court in either proceeding.

The sole issue below was whether the Commission, after full administrative proceedings, properly exercised its authority in the Sub No. 22 proceeding to reissue Bell's operating authorities relocating his point of joinder of separate grants of authorities and point of interchange with other interlining common carriers of property at his terminal in Longview, Texas, in

stead of at the Eastman plant site some 4500 feet away, allowing the continuance of the same services he had performed for the prior two years. If the district court upheld, as it did, the Commission's decisions in the Sub No. 22 proceeding, the Deviation proceeding would be mooted as every single issue raised in the earlier deviation matter would inevitably also be decided.

The lower court found that there was substantial evidence before the Commission to support its ultimate findings and conclusions in each proceeding; that there existed a rational basis for its determinations in both proceedings; that the action of the Commission in entering its orders was not arbitrary, capricious or in violation of any rule of law, nor did such actions impinge upon any vested right of any appellant.

It cannot be seriously disputed that the Commission in discharge of its functions of determination of public convenience and necessity delegated to it by Congress may determine the reasonable criteria under which a matter of public interest may be decided.

In *United Van Lines v. United States*, 266 F. Supp. 586, 589 (E.D. Mo. 1967) the court said:

> "The criteria by which the I.C.C. chooses to make determinations of public convenience and necessity may not be criticized by this court unless they are found to be capricious or irrational. The scope given the I.C.C. is broad, and within this scope the I.C.C. may choose criteria and weigh evidence of public convenience and necessity as it sees fit."

The Commission stated the criteria for the relocation of an interchange point in *Blue Bottle Transfer Company, Inc. — Extension — Kinnuka, Va.*, 92 M.C.C. 161, 165 (1963) as follows:

"Consequently, an applicant in an elimination of gateway proceeding must establish, in addition to operating economies and efficiency, (1) that it is actually transporting a substantial volume of traffic between the points involved by operating in good faith through its gateway and, in so operating, is effectively competing with existing carriers on substantially all commodities and all points within the scope of its operating authority, and (2) that the elimination of the gateway will not enable it to institute a competitively different service in the detriment of such existing carriers. Childress Elimination Sanford Gateway, 61 M.C.C. 421, and Maryland Transp. Co. Ext. Specified Commodities, 83 M.C.C. 151. On the other hand, in a proceeding involving the relocation of an interchange point, an applicant need only establish, in addition to operating economies or efficiency, that the interline service capable of being performed through the interchange point will not result in a service competitively different than that which can be performed through the present interchange point."

In *Hughes Transportation, Inc. Extension Interchange Point*, 67 M.C.C. 235 (1956), the Commission had a factual situation before it almost identical to that presented here. Hughes' joint line services with connecting carriers transporting explosives as well as non-dangerous commodities interchanged at a military installation under Hughes' common carrier authority to serve the "site" of the ordnance depot had been interrupted by letter advice from the commanding officer that depot property could not be used for this purpose. In rejecting objections of the parties protesting the application that Hughes was seeking to broaden its operating rights through the medium of interchange, claiming, at the time, Hughes secured the authority to

serve the depot, the question of interchange was not in issue nor had any witness indicated a need for such service, the Commission stated:

> "We do not agree with the conclusion in the prior report that shipper testimony is required in the circumstances here present to establish that public convenience and necessity require the proposed operation. As seen, applicant in obtaining authority to serve the Depot received a *concomitant right to interchange traffic with other motor carriers at that point.* In the exercise of that right, and subsequently under temporary authority, it had developed a large movement of explosives and related commodities. The performance of this interchange service for such a long period of time and the development of such a large volume of traffic, is a strong indication that there is a need for the continuance of the service. *While it may be within the police power of a state, or a division thereof, or of the Department of Defense, or a division thereof, to prohibit an interchange at certain points or within certain area subject to their control, it is our responsibility to prevent the disruption of service upon which the public has relied for a long period of time.* The granting here of authority designed to accomplish that purpose will not enable applicant to institute a new or different operation than it has performed in the past, and therefore, would not have any adverse effect upon the operations of the opposing motor carriers. A grant of the authority hereinafter described in the findings, therefore, is justified on the grounds set forth above." (Emphasis supplied)

See also *Southern California Freight Lines, Ltd.—Extension—Sacramento, Calif.*, No. MC-71459 (Sub No. 14) 94 M.C.C. 467, 469 (1964).

This Court emphasized the Commission's latitude in

this area in *United States v. Detroit & Cleveland Navigation Co.*, 326 U.S. 236 (1945) and the following portion of that opinion was cited by the lower court herein as follows:

> "... The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted. For the performance of that function the Commission has been entrusted with a wide range of discretionary authority. Interstate Commerce Commission v. Parker, 326 U.S. 60. Its function is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem an expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies. *Its doubt that the public interest will be adequately served if resumption of service is left to existing carriers is entitled to the same respect as its expert judgment on other complicated transporation problems. . .*". (Emphasis supplied)

The Commission is the arbiter of the public interest, *United States v. Pierce Auto Freight Lines*, 327 U.S. 515 (1945).

It cannot be seiously questioned that Bell had authority to use the plant property of Eastman for joinder and interline purposes up to April 1, 1966 although the certificates involved here had described the authority from and to the "plant site of Texas Eastman Company" at or near Longview, Texas. (J.S.App. F, pgs. 29a, 32a and 33a) See also Appendix A. The Commission had had the same question before it in *M. I. O'Boyle & Son, Inc.—Extension—Interpretation of Certificates*, 52 M.C.C., 248, and stated at page 250:

> "The fact that Bolling Field is a military reservation and operations within its boundaries are governed by the officials thereof does not require that we give different consideration to the tacking or combining of routes than if the field were not a military reservation."

The Commission's decision in the *O'Boyle* matter was upheld in *M. I. O'Boyle & Son, Inc. v. Interstate Commerce Commission,* 206 Fed. 2d 473 (D.C. 1953) and the court held:

> "Tacking or combining together separate grants of operating authorities so as to furnish a through service is allowed, when the grants themselves contain no restriction on tacking, if there is a point of service common to both authorities and the physical operation is rendered through the common point."

The Commission so found Bell had such authority in the Sub No. 22 proceeding (J.S. App. F., 29a), rejecting appellants' claim such authority was permissive or conditional; and these facts were also before the Commission in the pleadings and in the commission records at the time of the Deviation proceeding.

In the Sub No. 22 proceeding, it was shown and found (J.S. App. F, 23a) that substantial tonnage had been interchanged at the Eastman plant prior to April 1, 1966, and thereafter at the plant as well as under the Deviation order at applicant's terminal, aggregated in excess of 1,900 truck loads averaging 30,000 pounds from January of 1964 through March of 1966. Appellants have admitted in each proceeding that at least some of the chemicals transported over the plant site property were "inherently dangerous" as contemplated in the Deviation orders and have never denied

that the services rendered in competition to them were substantial and were capable of being rendered. This information was also available to the Commission in the Deviation proceeding.

Rather, the thrust of appellants' contentions that the Commission should not consider the concurring origin carriers and Bell's past joint-line services as meeting this criteria announced in the *Blue Ridge* case, supra, for this type of application under Section 207 is because: (1) No shipper witness appeared at the hearing of Sub No. 22 (only Mr. Bell testified and presented records of past operations); (2) no interline carriers testified the joint services would be continued; (3) the use of the plant site property was permissive or conditional; and (4) that the irregularities and interchange rules in joint operations of applicant and his two connecting carriers, found by the examiner not to be of such magnitude as to require a finding Bell unfit or incapable to conduct operations through the re-located gateway (J.S. App. F, 30a) made such past operations so unlawful as to preclude consideration.

Not one substantial question in these criticisms of the Commission's actions is raised as to whether this criteria of proof of the services capable of being rendered or the past services being substantially competitive has been met; or whether such criteria is arbitrary and unreasonable, or whether the Commission has arbitrarily applied such criteria to the facts.

While it is true neither of Bell's interline carriers appeared to testify in the Sub No. 22 proceeding that the services would be continued, there is no more compelling reason to require a concurring carrier to ap-

pear than to require shipper appearances. All either could do is reiterate what Bell's records conclusively proved;—that the services had been used and that there was no intention at the time to discontinue service.

Appellants raise matters outside this record at page 25 of the Jurisdictional Statement in this criticism—"Actually if the Commission had considered the matter at all, it would have found that the two carriers who had supposedly interlined with Bell had filed their own applications to eliminate the necessity of interlining with Bell." While the Commission perhaps could have taken knowledge of the filing of an application by one of the concurring carriers for authority to eliminate the use of Bell as a jointline carrier, appellants, to have been completely forthright with the Court, should have advised that the availability of Bell's joint-line services with that concurring carrier four months after the hearing on Sub No. 22 was considered as one basis for denial of that application in all material respects. (*Groendyke Transport, Inc., No. MC-111401, Sub No. 199*) The joint-line services in transporting "inherently dangerous commodities" authorized under the Deviation orders have been available and used continuously; and, after the lower court's decision upheld the Commission's order in Sub No. 22 allowing the re-issuance of the certificates as per Appendix B, chemicals of all types are being transported in quantity to date.

Of course, Bell knew that the Eastman management could refuse such use of its private property and that it was permissive or conditional. So was the use of Bolling Field in the *O'Boyle* case, supra, and the ordnance depot in the *Hughes* case, supra, permissive and conditional; but this did not deter the Commission

from seeing that service needed by public shippers would not be disrupted by the officials governing the military installations in those cases, or by the whimsey of the management of Eastman here.

No amount of argument by appellants that the "irregularities" noted by the examiner (and quickly converted by appellants to "unlawful operations") will preclude the conclusion that the operations of Bell for the prior two years was in substantial competition with appellants and indicative of the service capable of being rendered.

In *Best Way Motor Freight, Inc. v. United States,* 253 F. Supp. 314, (W.D. Wash. 1966) the court said:

> ". . . In our opinion, the probative value of evidence pertaining to a particular operation, in determining an issue of public convenience and necessity, is not affected by the fact that the operations may have been unlawful. If such operations demonstrate a need for such service, the need is none-the-less because of the fact, if it is a fact, that operating authority was lacking."
>
> See also *Armored Carrier Corp. v. United States,* 260 F.Supp. 602, affmd, 386 U.S. 924, 18 L.Ed. 2d, 524 (1967)

Appellants claim that Bell's original certificates being granted to take care of Eastman's needs, did not contemplate joint-line services to other shippers of like commodities is negated by the Commission's own interpretation of a certificate it had issued in *Arrow Transportation Co. of Delaware v. Owen Milton Collet,* 53 M.C.C. 411:

> "Such arguments entirely overlook the fact that certificates of public convenience and necessity is-

sued by the Commission are granted upon a finding, among others, that the proposed service, to the extent to be authorized by the certificate is or 'will be' required by the present or 'future' public convenience and necessity, and that they are not intended to limit the holder to the transportation of specific traffic moving at the time such certificate was granted. Once a carrier is authorized to serve a point, it may continue within the scope of its certificate, to handle all traffic offered for movement to or from the point, and *it is immaterial that certain traffic may not have been moving at the time the certificate was granted.*" (Emphasis supplied)

See also *Hughes Transportation Inc.—Extension*, supra.

The economies and efficiencies of operations of Bell's services at his re-located point of joinder and interchange were so patent that appellants have evidently abandoned their argument before the Commission and the court below that Bell had not presented compelling evidence meeting this criteria. The Commission so found there would be savings of time and expenses in Bell's operations, and the court below approved the decision.

The other criteria of a showing there would be no new or competitively different service created by the granted authority needed in this type of application under Section 207 is equally patent. A comparison of Bell's certificates as originally issued (J.S. App. F, p. 32a-33a) and Appendix B conclusively show that Bell can do no more now than he had been doing since 1963. The application was so drafted that no new service would be created, and the examiner so stated (J.S. App.

F, p. 17a). Although repeatedly called upon to do so, appellants have been unable to show to date how the continuance of the substantial services shown to have existed for two years prior to the hearing on Sub No. 22 would be either a new service or a competitively different service having an adverse affect upon their operation. It simply cannot be shown.

There has been no substantial question raised as to the reasonableness of the announced criteria for this type of application under Section 207, nor has there been any substantial question raised as to the reasonableness of rationale used by the Commission in applying the facts before it to this criteria to reach its decisions.

Despite argument of appellants to the contrary, the criteria for the elimination of a gateway and the relocation of an interchange point announced by the Commission in the *Blue Ridge* case, supra, have been met.

It was established, and the lower court approved the Commission's findings in this respect, both the "gateway" and the "interchange" point used by Bell was in Longview, Texas at the plant site of Eastman. The circuity from the plant site to Bell's terminal was less than a mile. It has been established that there would be patent operating economies and efficiencies effected in Bell's services if the interchange point was relocated. It cannot be disputed that in showing the services capable of being rendered by Bell and his jointline carriers by records of past traffic handled for over two years to meet the criteria in the relocation of the interchange also met the criteria of showing Bell and his jointline carriers had been effectively competing with

appellants to meet that criteria in a gateway proceeding.

Of course, under either type of proceeding under Section 207, the "relocation of interchange point" or the "elimination of the gateway" would of necessity here include the other as the "gateway" and the "interchange" points are both in Longview, Texas.

This was not the fact situation presented in *Bowman Transportation, Inc. — Extension — Substitution of Gateway,* 100 M.C.C. 314 (1965) affirmed *Bowman Transportation, Inc. v. United States,* 267 F. Supp. 57 (1967) relied upon by appellants, as there was only a substitution of gatesways involving a circuitous routing to be eliminated. Although obviously Bell's operations would be changed from joinder to another point in Longview with some savings of time and costs, such change in the operations was not shown to be a competitively different service with any resultant adverse effects upon appellants as pointed out above. Nor can the continuance of existing services be shown to impinge upon any vested right of appellants as found by the lower court.

Appellants in arguing Civil Proceeding No. 4175 as originating under different sections of the Act complain bitterly that the Commission held no hearing nor made any investigation to determine if Bell's proposal to deviate the point of interchange complied with the provisions of 49 C.F.R. 211. As shown above, their arguments were carried forward into the Sub No. 22 proceeding where the complete oral hearing of all the evidence that could possibly have been mustered for presentation in the Deviation proceeding was presented.

The extended oral hearing of the Sub No. 22 proceeding showed conclusively that at the time of the issuance of the deviation order on February 7, 1966, Bell's notice of the proposal to deviate, the protests of appellants and others, Bell's reply thereto, and records of the Commission otherwise available patently revealed every material element necessary to bring the proposal within the provision of 49 C.F.R. 211.1(c)(11)(ii); i.e. (1) that Bell's use of the Eastman property for joinder of authorities and interchange of equipment in jointline services was with express permission, (2) that although permissive or conditional, such operations were authorized under the O'Boyle decision; (3) that at least some of the traffic involved was inherently dangerous and has never been denied by appellants; (4) that such handling of such dangerous commodities constituted a threat to the safety of the public generally at the point of joinder or interchange; (5) that the relocated interchange point was less than one mile away and well within the ten miles allowed; (6) that the proposed deviation was in the interest of safety, and (7) that authorizing the permanent deviation of the interchange point only in so far as inherently dangerous commodities were concerned would not create a new authority. These facts were of record with the Commission, and no oral hearing or investigation outside the record was necessary or needed to reach its decision. The only purpose an oral hearing or investigation outside the record at this point could have served would have been delay and unnecessary exposure of the public generally to hazards the Commission had precluded in 49 C.F.R. 197.1(d).

In 49 C.F.R. 211.1(e) the Commission rules provided:

> "(e) Protests and replies thereto. Any person who considers that he is or will be adversely affected by a deviation described or proposed in any notice filed under paragraph (d) of this section, may file at any time a protest against such deviation. Such protest may be in the form of a letter but shall contain a recital of facts and information showing protestants interest and supporting his opinion that the facts and circumstances upon which the right to deviate depends are nonexistent, or have been incorrectly described, or that the carrier filing the deviation notice has not met the applicable conditions and requirements, and shall show that a copy thereof has been furnished to the carrier filing the notice. If such a protest is filed, the carrier which has filed the deviation notice may reply thereto within 20 days, after which the Commission will give due consideration to all facts of record or otherwise available to it in the particular case, including the notice and protest, and will make a determination therewith."

We submit appellants had a hearing based upon the records and claims they submitted in their pleadings in the Deviation proceeding, and they would have this court substitute its judgment for that of the Commission now that the lower court has refused to do so.

In answer to appellants' complaint that the Commission, in any event, erroneously applied the deviation rules 49 C.F.R. 211, we submit that *Greyhound Corporation v. United States, et al.*, 221 F. Supp. 440 (1963) supports the Commission's orders of February 7, 1966, and August 1, 1966.

In *Riss and Company v. United States,* 117 F. Supp.

296 (W.D. Mo. 1952) aff'md. mem. 346 U.S. 890 (1953), the district court said:

> "This 'hearing' was made up of the pleadings before the Commission alone."
>
> . . . . .
>
> "What Riss sought was an entire hearing (which normally would include oral argument). We conclude that the *requirement of an adequate hearing before the Commission has been met.*" (Emphasis ours)

In the *Greyhound* case, supra, the court used the following language citing the *Riss* case:

> "If the Commission after appropriate investigation determines the facts with respect to these criteria as contemplated by the regulation, there is no reason for redetermination of all the numerous elements required by the initial certification. The procedure for receiving evidence and ascertaining facts, whether by hearing, affidavits or otherwise, is a matter for the sound administrative discretion of the Commission so long as some reasonable procedure is adopted, Riss & Co. v. United States, 117 F.Supp. 296 (W.D. Mo. 1952 affm'd. mem. 346 U.S. 890, 74 S. Ct. 221, 98 L.Ed. 393 (1953)."

The *Greyhound* case, supra, is further inapplicable to this fact situation. Deviations from fixed routes to alternate routes for *operating convenience* under Section 211.1(c)(8) that would extend beyond 30 days, as in the *Greyhound* case, are governed by Section 211.1 (d)(4) which provides for publication of the proposal in the Federal Register; and, if a protest is filed, such deviation *shall not* be commenced until the Commission has considered and overruled the protest and found that the proposed deviation meets the requirements of

and is permissible under these rules. In the *Greyhound* case, the protesting carriers could and did show the court that such authorization of the use of an alternate route without protestants having been afforded ample opportunity in an oral hearing or thorough investigation would be to the protestants' competitive disadvantage resulting in possible or real losses of revenue. Despite being called upon by the Commission and the lower court to do so, appellants to this day have been unable to show how the authorization of the deviation of the interchange point of those shipments of inherently dangerous commodities to Bell's terminal about a mile down the road in continuation of a long existing service in any way would do them harm. Nor could appellants make such a showing in the Sub 22 proceeding.

Appellants' contention that the Commission's deviation orders are further voided by their failure to provide a standard for enforcement is equally without merit. Bell, his concurring carriers in joint-line operations and the shippers using their services are amenable to the Commission's rules for transporting explosives and inherently dangerous commodities thereby furnishing such standards.

Appellants argue further that the deviation orders would, standing alone without the Sub No. 22 proceeding, authorize Bell to permanently use his terminal for joinder of operating rights rather than the Texas Eastman Company properties. We agree insofar as inherently dangerous chemicals are concerned. Bell's inability to transport chemicals *not* inherently dangerous under the deviation orders precipitated the filing of the Sub No. 22 application.

Appellants cite the *Greyhound* case, supra, as authority for the permanent nature of the deviation orders, and again we agree. The interchange point as relocated did become the permanent point of joinder of authorities and interchange of traffic as contemplated by the Rule; and it mattered not whether Texas Eastman Company ultimately withdrew its permission to use its propertey on April 1, 1966, insofar as chemicals inherently dangerous was concerned as the property was not being used anyway for safety reasons.

CONCLUSION

We respectfully submit, therefore, that the judgment of the court should be affirmed.

Respectfully submitted,

DURWARD L. BELL, DBA
BELL TRANSPORT COMPANY.

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Date: January 9, 1970

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SUPREME COURT OF THE UNITED STATES

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NO. 880

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Appellees

On Appeal from the United States District Court for the Southern Division of Mississippi, Jackson Division

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CERTIFICATE OF SERVICE

I, Earl T. Thomas, one of the attorneys for appellees herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 21st day of January, 1970, I served copies of the foregoing document on the several parties hereto, in

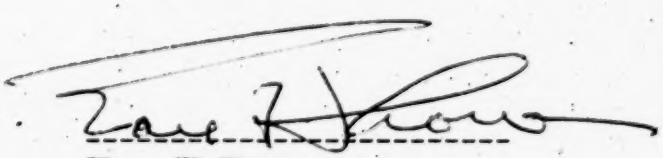
duly-addressed envelopes, with postage prepaid, as follows:

1. On Honorable Erwin R. Griswold, The Solicitor General, Department of Justice, Washington D. C. 20530, and Donald F. Turner, John H. D. Wigger, Esquires, Department of Justice, Washington, D. C. 20530, and Robert E. Hauberg, Esquire, United States Attorney, Federal Building, Jackson, Mississippi.

2. On Robert W. Ginnane, Esquire, General Counsel, and John E. Faulk, Esquire, Counsel, Interstate Commerce Commission, Washington, D. C. 20423.

3. On Phineas Stevens, Esquire, 700 Petroleum Building, Jackson, Mississippi 39205; Thomas E. James, Esquire, The 904 Lavaca Building, Austin, Texas 78701; Clayte Binion, Esquire, 1108 Continental Life Building, P. O. Box 17007, Fort Worth, Texas 76102, and Harry C. Ames, Jr., and E. Stephen Heisley, 705 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D. C. 20001, Attorneys for appellants.

4. On Joe T. Lanham, 1102 Perry-Brooks Building, Austin, Texas 78701.



EARL T. THOMAS

APPENDIX A

TEXAS EASTMAN COMPANY
Division of Eastman Kodak Company
Longview, Texas

January 12, 1966

Bell Transport Company
P. O. Box 2362
Longview, Texas

Attention: Mr. Durward L. Bell

Gentlemen:

Please refer to our letter of December 3, 1965, in which we advised you we were withdrawing our consent and approval to interchange equipment on our property effective the next day.

At your request, we have reconsidered this withdrawal. In order to avoid placing an undue hardship upon you, this will advise you that, while it remains our intention to ultimately withdraw our consent and approval, we are now agreeable to deferring it for the present.

Yours very truly,

TEXAS EASTMAN COMPANY

M. H. BRABHAM
Division Traffic Manager

MHBrabham
cl
cc: Mr. Joe T. Lanham
Lanham and Hatchell
Suite 1102
Perry-Brooks Building
Austin 1, Texas

APPENDIX B

(Corrected)

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY C-15.1

NO. MC 98749 SUB 1*

SERVICE DATE: OCTOBER 6, 1969

DURWARD L. BELL,
DOING BUSINESS AS
BELL TRANSPORT COMPANY,
LONGVIEW, TEXAS

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 25th day of August, A.D. 1969.

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience

*This corrected certificate embraces the operating rights in the certificates superseded and canceled in the last ordering paragraph above, as modified, and also embraces those operations authorized in No. MC 98749 Sub 22.

This corrected certificate is issued for the purpose of restating the restrictions on Sheet No. 2 of the certificate served herein August 25, 1969.

and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequqate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

IRREGULAR ROUTES:

Chemicals, as defined in *The Maxwell Co., Extension-Addyston,* 63 M.C.C. 677, in bulk, in tank vehicles,

From Longview, Tex., to Texas Gulf Ports and points in Illinois, Indiana, Kentucky, Louisiana, Missouri, Ohio, and Tennessee, with no transportation for compensation on return except as otherwise authorized.

Liquid chemicals, in bulk, in tank vehicles,

From Longview, Tex., to Texas Gulf Ports and points in Illinois, Indiana, Kentucky, Louisiana, Missouri, Ohio, Tennessee, California, Colorado, Michigan, Minnesota, Nebraska, Oregon, Washing-

ton, and Wisconsin, with no transportation for compensation on return except as otherwise authorized.

Synthetic plastics, in bulk, (not in liquid form), in specialized motor vehicle equipment,

From Longview, Tex., to points in California, Colorado, Michigan, Minnesota, Nebraska, Oregon, Washington, and Wisconsin, with no transportation for compensation on returned except as otherwise authorized.

Chemicals, in bulk, in tank or hopper-type vehicles,

From Longview, Tex., to points in Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, New Mampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and the District of Columbia, with no transportation for compensation on return except as otherwise authorized.

Chemicals, in bulk,

From Longview, Tex., to points in Arizona, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, with no transportation for compensation on return except as otherwise authorized.

From Kingsport, Tenn., to Longview, Tex., with no transportation for compensation on return except as otherwise authorized.

RESTRICTION: The operations authorized above are restricted to the transportation of traffic which either originates at or is destined to the plant site of Texas Eastman Company near Longview, Tex.; or to the transporation of traffic which is interchanged at

Longview, Tex.; or to the transportation of traffic which is moving in single-line service by tacking or combining the authority granted hereinabove with carrier's existing authority.

Gasoline, in bulk, in tank vehicles,

From Mt. Pleasant, Tex., to Arkadelphia, Magnolia, and Texarkana, Ark., and Bossier City, Mooringsport, Natchitoches, Oil City, and Vivian, La., with no transportation for compensation on return except as otherwise authorized.

AND IT IS FURTHER ORDERED, That this corrected certificate shall supersede Certificates Nos. MC 98749 Sub 1, MC 98749 Sub 8, MC 98749 Sub 10, as corrected, and MC 98749 Sub 16, issued December 4, 1963, November 2, 1959, April 27, 1961, and December 16, 1963, respectively, as modified by order dated April 7, 1967, in No. MC 98749 Sub 22, and that said certificates be, and they are hereby, canceled.

By the Commission, division 1.

ANDREW ANTHONY, JR.,
Acting Secretary

(SEAL)